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UNCLAS SECTION 01 OF 10 TRIPOLI 000039

SIPDIS

STATE FOR EEB/IFD/OIA AND NEA/MAG; STATE PASS USTR (BURKHEAD);
LONDON AND PARIS FOR NEA WATCHERS; USDOC FOR ITA/MAC/ONE (MASON), ADVOCACY CENTER, AND CLDP (TEJTEL, TALAAT); CAIRO FOR TREASURY

E.O. 12958: N/A
TAGS: ECON EFIN ETRD KTDB LY EPET OPIC PREL USTR ECIN
EINV
SUBJECT: LIBYA: INVESTMENT CLIMATE STATEMENT

REF: STATE 124006

TRIPOLI 00000039 001.2 OF 010

INDICATORS FOR LIBYA:

¶1. Indicators:
Transparency International: Libya is ranked 130 on the Corruption Perceptions Index.
Heritage Foundation: Economic Freedom Ranking: 171
World Bank Doing Business: Libya is not ranked
Millennium Challenge Corporation: Libya is not ranked

OPENNESS TO FOREIGN INVESTMENT

¶2. In recent years, Libya has taken a number of steps to encourage foreign direct investment, with its current initiative dating back to the mid-1990s. Since that time, Libya enacted numerous laws and regulations intended to improve the Libyan business climate and increase its attractiveness to foreign investment. This effort has been modestly successful; foreign companies are returning to do business, and Libya has been able to draw substantial interest from foreign investors, particularly since the lifting of UN sanctions in 2003. This has included billions of dollars in investment in Libya's energy sector. Libya has also embarked on vast new development projects, including plans to spend 150 billion Libyan dinar (LD) (approximately US $123.4 billion) on public works, much of it in infrastructure and housing, over the next five years.

¶3. Through Law No. 5 (1997), "Encouragement of Investment Decision," the government attempted to diversify its hydrocarbons-dependent economy, encourage technical training of Libyan nationals and enhance regional development. Sectors targeted under this law include - but are not limited to - agriculture, industry, tourism, services and health. The provisions of Law No. 5 attempt to lower the tax and customs fee burdens on qualifying companies. Under the law, imported machinery, tools, and other capital equipment are exempt from all customs duties and taxes; any equipment, spare parts, or primary materials needed for the project operation are exempt for a period of five years; the affected project is exempt from income tax on its activities for a period of five years from the date of the commencement of production or work; goods directed for export are exempt from excise tax and from the fees and taxes imposed on exports; stamp duty tax on commercial documents are exempt; and finally, profits from a project will enjoy the same exemption if reinvested. A 2006 General People's Congress (GPC) amendment to Law No. 5 lowered a 50 million Libyan dinar (approximately US $41 million) floor on investments qualifying under the law to LD 5 million (approximately US $4.13 million) (LD 2 million if 50% or more of the project is owned by Libyans).

¶4. The Libyan Foreign Investment Board (LFIB) was created as the implementing agency for Law No. 5. The LFIB was replaced in 2009 by a similar organization, known as the Privatization and Investment Board (PIB). This organization's mission is to oversee and regulate foreign investment in Libya's aging and obsolete industrial base, which is characterized by an absence of national industrial planning, obsolete technology, poor management, shoddy maintenance, slow restructuring and over-employment. The function of the PIB is essentially to serve as the screening mechanism for foreign direct investment. While PIB's mandate theoretically includes investment-promotion, its activity is generally limited to processing foreign investment inquiries, except those related to tourism or the Misurata Free Zone. (Note: Applications for investment in those sectors should be directed to the Tourism Committee and the Free Zone Authority, respectively. End note.) This organization aims to be a "one-stop shop," assisting with issues related to customs and immigration, taxes, and labor for those companies entering under Law No. 5. PIB approval is required for a broad array of operational issues for projects undertaken under Law No. 5, including the disposal of imported materials, transfers of investment capital outside of Libya at project completion, and employment of foreigners when qualified Libyans cannot be hired.

¶5. Libyan legal requirements on foreign companies present challenges with respect to operational activities. Non-Libyans cannot, as a rule, own land. (Note: A provision of Law No. 5 does allow for foreign rental and ownership of land for project work, although this has not been widely observed in practice. End note.) "National Treatment" provisions do not exist for foreign investors. The local content requirement is such that foreign companies must hire a number of Libyans to at least

match the number of expatriates on staff. In the oil sector, Libyans put forward for employment with foreign companies often

lack formal qualifications or applicable practical experience, leaving companies to either invest a considerable amount of resources on extensive training and mentoring or to pay employees who do not contribute to the company's productivity.

¶6. The promulgation of Law 443 on November 14, 2006, fundamentally changed the way that foreign businesses in the oil services, construction, industry, electricity, communications, transportation, agribusiness and marine sectors can structure themselves and operate in Libya. Among other measures, new foreign entrants seeking to establish themselves in these sectors of the Libyan market are required to establish joint venture companies with a Libyan entity. Law 443 liberalized the strictures of earlier regulations by allowing foreign companies to retain up to 65% ownership of these entities. The law does not apply to representative offices (which do not have the right to conduct negotiations or enter into contracts), and to entities formed under Law 5 of 1997 or Law 7 of 2004 (governing tourism projects).

¶7. Some political screening of foreign investment takes place, and the political equities significantly influence decisions on government procurement. In 2007, senior Libyan officials made public statements directly linking successful foreign bids on development projects to the health of bilateral political relations. There is also strong evidence that large government and quasi-government tenders are awarded for political reasons, often in tacit exchange for deals perceived to demonstrate Libya's return to the international community. Similarly, large tenders are withheld when political relations are not perceived to be positive. This has a trickle-down effect on private sector business transactions, which can be made more difficult by Libyan government interference. The Committee for Audit and Oversight reviews all contracts involving government funding, and exercises considerable influence over the political vetting of foreign companies seeking to enter the Libyan market.

¶8. Foreign firms are subject to special taxation arrangements, including the Stamp Tax, which places a special tax of 0.5-3 percent on the value of items procured by foreign firms in Libya, and the Jihad Tax, which applies a 4 percent tax on corporate profits. Corporate tax rates are subject to interpretation, and are often a matter of negotiation between the company and Libyan tax authorities, particularly for larger companies/projects. Law No. 5 (1997) does provide some tax benefits for companies conducting work in Libya that falls under its terms, but requirements to receive these benefits are not clearly defined in the law. Furthermore, several standard forms of tax relief are not provided, resulting in high withholdings and income taxes.

¶9. The government began a program of privatizations of 360 state-owned enterprises in 2004, a process that is ongoing. Although foreign entities are allowed to participate, they must do so under local rules, which include employment protections for Libyan workers and divesting shares to a wide number of individual owners (with a preference for Libyans).

CONVERSION AND TRANSFER POLICIES

¶10. From February 1999 to December 2001, Libya maintained a dual exchange rate, with the official rate pegged to a Special Drawing Right (SDR) at the rate of 1LD=.608 SDRs. State import agencies effected transactions using the official rate. Since 2001, the Libyan Dinar has been unofficially pegged to the U.S. Dollar (allowed to float within a specified band). With a 50% devaluation of the official rate in 2002, the two rates were effectively unified. A further 15% devaluation took place in June of 2003. In June of the same year, Libya agreed to the terms of IMF Article IV consultations, which called for, among other things, advanced import requirements and an end to the 15% exchange tax and subsidy.

¶11. Individuals with residence permits are permitted to hold foreign currency in Libyan accounts. Non-residents working in Libya may open domestic accounts in which to hold earnings. Central Bank approval is required for all other credits to non-resident accounts. Per-transaction withdrawals are limited to 5,000 USD in cash and 10,000 USD in travelers' checks (Note: Traveler's checks are not widely accepted in Libya. End Note).

¶12. The right to open an account in a convertible currency in a Libyan commercial bank is provided for companies entering Libya under Law No. 5. The Libyan Banking Law (Law No. 1 of 2005) allows any Libyan person or entity to retain foreign exchange

and conduct exchanges in that currency. Libyan commercial banks are allowed to open accounts in foreign exchange and conduct cash payments and transfers (including abroad) in foreign currency. Commercial banks operating in Libya may grant credit in foreign exchange and transact in foreign exchange among themselves. Entities engaging in foreign exchange must be licensed by the Central Bank. Foreign exchange facilities are available at most large hotels and airports, and ATMs are becoming more widely available. The importation of currency must be declared at time of entry. It is illegal to import or export Libyan Dinars in any quantity.

¶13. Most firms seeking to receive payment for services/products in Libya operate using Letters of Credit (LOCs) facilitated through foreign banks (often based in Europe). Foreign energy companies remitting large sums often make arrangements for direct transfers to accounts offshore. There have been reports of difficulties arranging LOCs with Libyan entities, owing to a

range of institutional inefficiencies that slow the closure of deals, causing them to collapse as prices rise and deadlines slip.

EXPROPRIATION AND COMPENSATION

¶14. The Libyan government has a history of state expropriation of private property, including the assets of foreign companies. These actions were most prevalent during the 1980's, taken largely for ideological reasons, and included the nationalization of whole industries with the stated purpose of greater wealth distribution among the population. These activities appear to have fallen out of practice as a tool of government policy, although regime rhetoric in early 2009 involving the possible nationalization of the oil sector in light of falling world oil prices has brought the issue back to the fore. In recent years, the Libyan government has taken steps to expand the rights of Libyans to operate private enterprises and buy and rent property.

¶15. Several high-profile expropriations made in the energy sector have been resolved through a process of negotiations between the government and the affected companies. With the advent of a series of economic reforms and efforts at greater transparency since 2004, the prospect for government appropriation appears to be in decline. There have been other instances of compensation by the state for expropriated property, but figures related to the terms provided are not available.

¶16. With the imposition of Law 443 of 2006, local ownership is essentially enforced for most foreign entities seeking to do business in Libya, as well as many established before the law came into effect. While this law boosts the percentage of foreign ownership when compared with previous regulations, it requires that at least 35% of non-Libyan businesses be controlled by Libyan individuals or companies. This law has made competent Libyan partners in all sectors a highly valuable commodity for foreign investors, providing ample fuel for rent-seeking behavior in many sectors of the economy.

DISPUTE SETTLEMENT

¶17. The Libyan court system consists of three levels: the courts of first instance, the courts of appeal (also known as the courts of cassation); and the Supreme Court, which is the final appellate level. The GPC appoints justices to the Supreme Court. Special "revolutionary courts" may operate outside the court system to try political offenses and crimes against the state. "People's courts," another example of extrajudicial authority, were abolished in January 2005. A decree providing for state security courts was propagated in late 2007, and security courts were established in spring 2008. Matters related to personal law in Libya's justice system are nominally based on Sharia law. Other issues, including the commercial code, are largely based on Italian law, much of which dates to the 1950's.

¶18. Libya is not a signatory to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The "New York Convention"). In the case of commercial disputes, most foreign entities currently opt to try cases before the International Chamber of Commerce, the judgments of which Libya has a history of respecting.

¶19. The law governing agencies specifies cases in which a contract may be terminated by either party. Otherwise, local courts will rule on the legality of the termination and/or award

compensation to the injured party. Contracts are only exclusive if thus specified in the agency contract. Some agent-company disputes have reportedly been settled through direct appeal on the part of the foreign company to the General People's Committee of Industry, Economy, and Trade. Given the relative newness of the private sector, little precedent exists in this area.

PERFORMANCE REQUIREMENTS AND INCENTIVES

¶20. Libya is not a member of the WTO. Libya's application was received by the WTO on June 10, 2004. The General Council established a Working Party on July 27, 2004, and Libya is in the process of preparing its complete file for membership. Many of Libya's key supporting documents are in Arabic; translating these into correct, technically accurate English has been a significant impediment, according to Libyan trade officials.

¶21. Under the terms of Investment Law No. 5 (1997), approved projects receive a 5 year corporate income tax holiday (eligible for possible 3 year extension), exemption from corporate taxes and stamp tax on legal documents, exemption from customs duties and taxes on imports on project materials (5 years), and exemption from excise taxes for exported goods derived from the project. These incentives are only available for projects approved by the PIB for implementation under Law No. 5. They do not apply for projects disapproved by the PIB, or to foreign and domestic investors implementing projects outside of Law No. 5 (joint stock companies, Libyan agents, etc). Foreign firms and individuals generally have a more difficult time than Libyan nationals accessing credit from Libyan banks.

¶22. Offsets are often a part of large foreign investment deals, particularly in the energy sector. "Corporate responsibility" and local staff training programs are common requirements for successful concession bids, and training programs in particular are generally essential to win bids on most Libyan government contracts. These programs can range from the training of a handful of local staff up to multi-year programs exceeding US $50 million for large energy companies. Also, some foreign firms have moved beyond these measures to bankroll much larger development projects. For example, following the October 2007

10-year extension of its holdings in Libya, Italian energy firm ENI Spa announced that it had signed an MOU with the Qadhafi Development Foundation to provide US $150 million for the building of hospitals and schools, and for the preservation of historical sites. Offsets of this type are very likely to remain a part of the business landscape for the foreseeable future.

¶23. Regarding visa matters, current U.S. and Libya visa policies are based on a framework of 'general reciprocity.' U.S. citizens are usually issued single-entry visas, and frequently encounter significant delays and complications in obtaining visas. Visas must be obtained prior to travel to Libya; they require an invitation or sponsor, and can take up to several months to process. Residence permits are often difficult for foreign workers to obtain, and usually require several trips in and out of Libya. U.S. visitors to Libya should expect to wait weeks to months for issuance. Libyan visa practice is subject to change without notice, and can also be influenced by political factors. For example, in November 2007, Libya re-implemented an existing regulation requiring a stamped Arabic translation in all passports. This requirement lacks clarity, is not applied in a uniform fashion and was implemented without prior warning. In December 2008, the Libyan Embassies in London and Paris began to require that visa applicants appear in person and submit a lengthy list of supporting documents. This requirement was also imposed without prior notice, and was imposed worldwide in 2009. In addition, political tensions between Libya and Canada in 2009 resulted in Libya's withholding of visa approvals for Canadian citizens. In the summer of 2008, a member of the Qadhafi family was arrested in Switzerland, and as a result, Libya detained two Swiss businessmen for a year and later charged them with visa violations (as well as tax charges). As of January 2010, they still were not permitted to leave Libya and their cases were going through the Libyan court system. Further information on visas can be found in the Country-Specific Information for Libya at the State Department website:
http://travel.state.gov/travel/cis_pa_tw/cis/ cis_951.html.

RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶24. Laws and regulations on investment and property ownership allow domestic and foreign entities to establish business

enterprises and engage in remunerative activities. However, the regulatory and legal environment is complex, and there is a systemic bias which favors government sector companies and Libyan firms over foreign entities. Foreign companies have several options for operating in Libya, including the establishment of joint ventures/joint stock companies, representative offices or to enter Libya under the terms of Law No. 5. However, foreign investors are increasingly being encouraged to form joint ventures with Libyan entities in accordance with Law 443 of 2006. In practical terms, this has restricted the terms of foreign entry into the market.

¶25. Since 2004, foreign nationals and companies are allowed to lease property from private Libyan citizens. Rights to land ownership are possible only for foreign companies entering Libya under the terms of Law No. 5. There is considerable ambiguity in both the public and private rental markets; many aspects of these arrangements are left to local officials. Market distortions exist for various supplies related to housing, including industrial and construction supplies, and there is a lack of transparency in the distribution of these materials. The return of foreign companies and investors to Libya in 2003 has fueled a rapid increase in the price of rental housing and office space, and set off a construction boom. This has generated additional pressures on prices and building materials.

PROTECTION OF PROPERTY RIGHTS

¶26. Libyan property rights are complicated by past government policy actions and a weak regulatory environment. The Libyan government eliminated all private property rights in March 1978, and eliminated most private businesses later in the same year. The renting of property was declared illegal, and ownership of property was limited to a single dwelling per family, with all other properties being redistributed. Reduced rate "mortgages" were paid directly to the Libyan government, but many Libyans were exempted from these payments based on family income. This process, and the destruction of official property documents that followed several years later, has greatly complicated subsequent efforts to gain clear titles to property throughout Libya.

¶27. Trademark violations are widespread and violators are adept at producing credible fakes. U.S. brands are at the present time extremely vulnerable to such activity, for their presumed high quality and Libya's lack of direct experience with the "real thing." The entry of several U.S. firms (most often through agents) has served to curtail some of the worst abuses related to their product lines. The General Authority for Products Control has established branches in seven Libyan cities, but they are primarily focused on health and safety issues. The Embassy has noted several cases in which foreign firms successfully pursued claims against trademark infringements by local (Libyan) companies.

¶28. While Libya is in the process of applying for entry to the WTO, it is not currently a member, and thus is not a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The IMF has called upon Libya to bring its IPR regime in line with international best practice, and the General People's Committee for Industy, Economy and Trade is reportedly making a renewed effort to deal with the problem, although clear evidence of progress is not apparent.

TRANSPARENCY OF REGULATORY SYSTEM

¶29. The Libyan regulatory system is not transparent; the

function and responsibilities of Libya's myriad government institutions are opaque and often contradictory. Transparency International ranked Libya 130th out of 180 countries ("1" indicating least corrupt) in its 2009 Corruption Perceptions Index. Libya's legal and policy frameworks are similarly difficult to navigate. The issuance of licenses and permits is often delayed for significant periods for unspecified reasons, and such applications often appear to be adjudicated in a subjective fashion. The lack of transparency and clearly delineated lines of decision-making within Libyan institutions have fostered an environment in which graft and rent-seeking behavior are common.

¶30. Accurate, current information on the Libyan market and key commercial regulations is difficult to obtain. There are no non-governmental organizations present in Libya to help facilitate regulatory transparency.

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶31. Libya's banking system is dominated by four banks, which are owned in full or in the majority by the Libyan Central Bank (Jamahiriya Bank, which merged with Umma Bank in 2008, Wahda Bank, Sahara Bank, and the National Commercial Bank). These banks constitute almost ninety percent of Libya's banking sector assets. All of these banks have capital of at least 100 million Libyan Dinars, and two of them (Wahda Bank and Sahara Bank), were recently privatized. France's BNP Paribas acquired 19% of Libya's Sahara Bank in July 2007, and took operational control of the bank. The deal also included an option allowing BNP Paribas to purchase additional shares of up to 51% of Sahara's capital over the next three to five years. In November 2007, five foreign banks were shortlisted for the privatization of Wahda Bank, including French, Italian, Jordanian, Bahraini and Moroccan institutions; the Arab Bank of Jordan was selected. The Arab Bank of Jordan bid on a 19% share of Wahda Bank, with the option to increase their ownership to 51% in three to five years. The Central Bank announced in October 2007 that it would merge Umma Bank and Jamahiriya Bank into a single entity; that process was completed in 2008, although there are still branches open under the banner of each bank. The Central Bank also owns the Libyan Foreign Bank, which operates as an offshore bank, with responsibility for satisfying
Libya's international banking needs (apart from foreign investment). In addition, there are four specialized banks owned by the General People's Committee for Finance: the Agricultural Bank, Real Estate Investment Bank, Development Bank and Reefi Bank. There are also four substantial private banks (Bank of Commerce and Development, Amen Bank, Al-Jimaa al-Arabi Bank and Wafa Bank) and forty-eight smaller regional banks.

¶32. The availability of financing on the local market is weak. Libyan banks offer limited financial products, loans are often made on the basis of personal connections (rather than business plans), and public bank managers lack clear incentives to expand their portfolios. Lack of financing acts as a brake on Libya's development, hampering both the completion of existing projects and the start of new ones. This has been particularly damaging in the housing sector, where particularly small-scale projects often languish for lack of steady funding streams.

¶33. The Libyan banking system is currently undergoing a substantial modernization program to upgrade available services/products, deal with large numbers of non-performing loans, establish a functioning national payments system, facilitate the use of non-cash payment instruments and institute new standards of accounting and training. While foreign banks are technically able to enter the Libyan market under the Banking Law of 2005, the Central Bank has sought to delay their entry until the reform process has taken hold.

COMPETITION FROM STATE OWNED ENTERPRISES

¶34. Private enterprises are allowed to compete with public enterprises under the same terms and conditions with respect to access to markets, credit, and other business operations. However, since approximately 80 percent of the economy consists of public sector entities, most large companies are government-owned and therefore, are the only companies that have the required capital to form joint ventures with foreign partners. SOEs are active in all sectors in Libya and especially in the Energy, Telecommunications, and Construction sectors.

¶35. In terms of corporate governance, most state-owned enterprises (SOEs) have a ten-member board of directors. The company's senior management reports to this board, which in turn reports to a government Minister (called a Secretary in Libya). In reality, most important decisions are made by the high-level government officials who instruct the senior management.

¶36. Libya has a sovereign wealth fund (SWF), known as the Libyan Investment Authority (LIA), which was established in 2007. The LIA is ultimately overseen by the prime minister, with an 11-member board of trustees. According to the International Monetary Fund (IMF), the LIA invests mostly abroad although some of its investments are being channeled to the domestic Libyan oil sector and to the Libyan Development and Investment Fund (which has holdings of 16 billion Libyan dinars or approximately US $13 billion). This fund was established in March 2009 in partnership with the Central Bank of Libya and the private sector.

¶37. Neither state-owned enterprises (SOEs) nor Libya's sovereign

wealth fund (LIA) are required by law to publish an annual

report. The practice, however, is for SOEs to produce financial statements but not to have them independently audited. These companies primarily undergo internal audits and are not reviewed by independent, third-party auditors.

CORPORATE SOCIAL RESPONSIBILITY

¶38. While the term "Corporate Social Responsibility" is not well-known in Libya, the general concept of companies helping local charities and members of the community in need does exist. For example, one state-owned enterprise provides office space to an organization that assists children in need of cancer treatment. Many foreign companies have programs with communities and officials to address needs in healthcare, road safety, and education. While most firms follow generally accepted CSR principles, the extent to which they follow the OECD Guidelines for Multinational Enterprises is unknown. Firms who pursue CSR are viewed favorably by the general public and by officials. As noted above, elements of "Corporate Social Responsibility" and local staff training programs are common requirements for successful bids in the energy and construction sectors.

POLITICAL VIOLENCE

¶39. Libya has experienced political violence. In December 2008, demonstrators threw rocks at the Egyptian Embassy in protest of Egypt's policies in connection with events in the Gaza Strip. The Mauritanian Embassy was also targeted. Protests in the city of Benghazi in response to the publication of cartoons depicting the Prophet Muhammad in a Danish magazine on February 17, 2006, resulted in the deaths of at least ten people and severe damage to the Italian consulate and a number of businesses. U.S. interests in Libya have not been targets of political violence since the reestablishment of diplomatic ties in late 2003. Peaceful demonstrations, small and large, do occur periodically.

¶40. The Government of Libya takes active measures to maintain public security, and to prevent terrorist attacks. Recent worldwide terrorist alerts have stated that extremist groups continue to plan terrorist attacks against U.S. interests in the Middle East region, including Libya. Visitors to Libya should consult the Department of State's latest travel information on Libya and the region at:
http://travel.state.gov/travel/cis_pa_tw/cis_ pa_tw_1168.html.

CORRUPTION

¶41. Despite high-profile campaigns designed to draw attention to the issue, corruption remains widespread in Libya. It frequently takes the form of openly solicited or thinly veiled requests for valueless intermediation (i.e., rent seeking) or outright payoffs. This could include approvals for basic bureaucratic processes, such as required permits and services provided only by the government. Given the state of bureaucratic inefficiency and low salaries for government employees in Libya, these types of transactions are generally viewed as a necessary part of doing business by local operators. Moreover, there is a general public perception that such interventions are essential to ensure the best pricing, service, etc. This tendency serves to reinforce the importance of personal connections and insider knowledge in the conduct of day-to-day business operations.

¶42. While there are quasi-governmental organizations in Libya, non-governmental organizations (NGOs) do not exist in practice. There are no international, regional or NGO "watchdog" organizations present in Libya. Several websites critical of government corruption are operated by Libyan opposition groups located outside of the country. Libya is a signatory to the UN Convention Against Corruption (UNCAC), but there has been little evidence of its implementation.

¶43. The government has established the "Administration and Oversight Board" as the responsible Libyan agency for the oversight of government activities for the prevention of corrupt practices. There has also been a public push for transparency on the part of high-ranking government officials. A series of speeches by Muammar al-Qadhafi during late 2006 set out a four-month window for all officials occupying senior government positions to declare all of their earnings and assets or risk unspecified punitive action by the state. In January 2007 this deadline was extended for several months, and there were reports of arrests of leading businessmen on allegations of corrupt practices. Out of 4,600 files of senior government officials

that were reviewed, 150 were suspected of corruption, and out of those, 20 were referred to the courts for judicial action. However, there was no clarity as to whether these actions were directly related to Qadhafi's ultimatum. The Libyan leader and his son, Saif al-Islam al-Qadhafi, did address corruption in broad terms in a number of other public remarks made in 2007 and 2008, and called for greater accountability.

BILATERAL INVESTMENT AGREEMENTS

¶44. There are no bilateral investment agreements in force between the U.S. and Libya. USTR and Libya are negotiating a Trade and Investment Framework Agreement (TIFA) which is expected to be finalized and signed in 2010. Libya has also stated its interest in concluding a treaty for the avoidance of double taxation with the U.S.

¶45. Libya has concluded a number of bilateral economic cooperation agreements with EU member states, and with Turkey, Tunisia, Kenya, Singapore and others. The terms of these agreements vary, ranging from MOUs with no binding aspects to more substantial agreements that grant "most favored nation" trade benefits, joint investment funds, and the abolishment of visas for Libyans and the other country. Libya has concluded a number of tax treaties, including a new agreement with the UK in

late 2007.

¶46. Libya is a member of the 1989 Arab Maghreb Union (AMU) linking Tunisia, Algeria, Morocco, Mauritania, and Libya. The AMU's stated objectives include the encouragement of free movement of goods and people, revision and simplification of customs regulations, and movement towards a common currency. Nominally, AMU mandates duty-free trade among its members. Disputes between AMU members have prevented significant progress within the group. Libya is also a founding member of the Community of Sahel-Saharan States (CEN-SAD). CEN-SAD's Secretariat and the CEN-SAD Bank for Investment and Trade are both headquartered in Tripoli. CEN-SAD is dedicated to creating an economic union among its 23 member states, although it has not made great progress toward this goal. Citizens of CEN-SAD member countries are afforded the use of dedicated immigration stalls upon arrival at Libya's major airports.

¶47. Libya is a part of the Greater Arab Free Trade Area (GAFTA, also called PAFTA, Pan Arab Free Trade Agreement) and the Euro-Med Partnership (EMP), also known as the "Barcelona Process," a dialogue between the European Union and 12 Mediterranean countries. The Barcelona Declaration of November 27, 1995 outlined goals of reducing political instability and increasing commercial integration. In 1999, 27 EMP partners agreed to admit Libya contingent on Libya's accepting the Barcelona acquis. In February 2004, Libya announced its intention to join the Barcelona process in full, but no formal Libyan request has been made to date.

OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶48. President Bush waived bans on Export-Import Bank activities in Libya on February 28, 2006, and EXIM has conducted two visits to Libya since that time. EXIM offers financing assistance to US export projects with Libyan government-owned entities in three areas: the aviation sector, project finance (requiring predictability and hard revenue streams), and projects backed by the full faith and credit of the Libyan government (i.e., a "sovereign guarantee") for loan repayment.

¶49. OPIC does not as yet offer financing or guarantees for U.S. business activity in Libya. A senior-level OPIC delegation visited Libya in 2005 to discuss with Libyan authorities a proposed bilateral agreement, and the Deputy Foreign Minister met with OPIC officials in Washington, DC in 2007 to discuss the issue further.

LABOR

¶50. While official figures put the unemployment rate at 13%, unofficial estimates place the real rate at 30 to 40%. Libya's labor force numbers about 1.3 million persons, roughly 31% of whom work in industry, 27% in services, 24% in government and 18% in agriculture. Despite laws prohibiting moonlighting by civil service employees, many government functionaries hold multiple jobs. The majority of Libyan women hold some form of employment outside the home. Libyan labor law stipulates minimum wage, working hours, night shift regulations, dismissal and training. Laws governing dismissal are reasonably strict, and

favor the employee.

¶51. Foreign workers make up a significant percentage of the Libyan labor pool, particularly in the service industries and manual labor jobs. During the 1980's, the Libyan government increased pressure on foreign workers and contractors, which it saw as consuming valuable foreign exchange and contributing to a growing unemployment problem. In 1983, 560,000 foreigners worked in Libya; by 1986, the number dropped to less than 200,000. As oil revenues rebounded in the early 1990's and Libya increased its profile on the African continent, al-Qadhafi announced an "open borders" policy, prompting a massive influx of work-seekers from Chad, Ghana, Niger, and other Sub-Saharan African states. Unable to find work in Libya, many of these immigrants have continued northward and have contributed to the economic migrant problem in Southern Europe. Migrants from Egypt also make up a sizable portion of Libya's informal labor force. With mounting pressure from the EU, and rising unemployment at home, Libya has in the past resorted to deportation. In early 2007, officials announced a series of measures to reduce the presence of illegal workers in Libya. In late 2007, the Egyptian border was temporarily closed to migratory workers. The Secretary of the GPC for Manpower, Employment and Training has called on all Libyan and foreign employers to ensure the legality of their employees under Labor Law No. 58, including the warning that failure to do so will result in punishment ranging from fines, to withdrawal of work permits, to imprisonment.

¶52. Law No. 15, passed in 1981, capped government salaries at between 150 and 500 Libyan Dinars (LD) per month, depending on grade. There had been no cost of living adjustment from that date until 2006, when several changes were instituted to raise minimum salaries in the public and private sectors. GPC Decision No. 277 of 2006 established basic government salaries at the following levels: 130 dinars for persons without dependents, 180 dinars for families with two members, and 220 dinars for a family of three of more members. Additional GPC Decisions during 2007 raised minimum salaries for other categories of employees, including those with advanced degrees and technical skills and corporations not financed by the central government, and removed a pay cap in place for many types of work outside of the public sector. There were also targeted pay raises for, inter alia, Libyan employees of state energy companies, healthcare workers and teachers.

¶53. Independent trade unions and professional associations are illegal in Libya. While workers do not have the right to form unions, they are allowed to participate in an organization

called the National Trade Unions' Federation, created in 1972. Collective bargaining does not exist in any meaningful sense, as labor law requires government approval for all related actions.

¶54. Unemployment is a major policy concern for the Libyan government, particularly in light of an expected increase in the pace of privatization, which would inevitably release large numbers of state-salaried employees into the market. In addition, 78,000 students graduate from Libya's state-run universities and enter the labor market each year. Proposals have been discussed for the creation of mechanisms such as an early retirement fund, vast re-tooling/re-training programs, and the creation of some form of social safety net. There have been some government actions to provide shares in public and private companies to "those Libyans deprived of wealth," as well as the announcement by Saif al-Islam al-Qadhafi of the institution of government-funded savings accounts for Libyans born after August ¶2007. Also, in January 2007, the GPC coupled its announcement of the liquidation of 400,000 Libyan government positions over a three-year period with news that the incumbents could either draw their regular salary or take a US $43,000 loan designed to finance start-up costs of a small business.

¶55. The government directly intervenes in the hiring practices of foreign companies operating in Libya. For example, a 2006 decree ordered that all foreign oil companies must hire a Libyan national Deputy County Manager and Finance Manager. In August 2009, the government decreed that all foreign branch companies must hire Libyan general managers, but the government has inconsistently applied the rule. The National Oil Corporation also regularly assigns both qualified and unqualified Libyan workers to foreign energy companies. Foreign companies have generally responded to the imposition of unqualified workers in one of two ways: paying these individuals without expecting them to work, or undertaking an extensive training program to bring them up to a basic industry standard. Companies also receive

lists of unemployed workers from the General People's Committee for Manpower and are requested to voluntarily find positions for them.

FOREIGN TRADE ZONE/FREE TRADE ZONES

¶56. Misurata, 210 km east of Tripoli, is the location of Libya's sole operating Free Trade Zone (FTZ). Projects in the free zone enjoy standard "Five Freedoms" privileges, including tax and customs exemptions. At present, the zone occupies 430 hectares, including a portion of the Port of Misurata. As of the end of 2008, the infrastructure for the free zone was still under development. Dubai's Jafza International signed an agreement with the Misurata FTZ Authority in October 2007 which commits both sides to explore the possibility of forming a joint venture, or granting Jafza a 30-year concession of over the FTZ. Later in the same month, Libya's General People's Committee announced plans to allocate roughly US $700 million to upgrade the free zone's facilities.

FOREIGN DIRECT INVESTMENT STATISTICS

¶57. Reliable foreign direct investment statistics for Libya are currently unavailable. Foreign energy companies have invested billions of dollars in the Libyan oil and gas sectors since the lifting of UN sanctions in 2003 and U.S. sanctions the following year. Libya has announced vast new development projects, including plans that it would spend 150 billion dinars ($123.4 billion) on public works over the next five years. The Libyan government has embarked on an ambitious plan to upgrade its infrastructure, and construction is underway to build new roads, airports, railroads, and housing.
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